



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/07/08	Bill No:	<u>AB 1895</u>
Tax:	Sales and Use	Author:	Silva
Related Bills:		Position:	Support as Sponsor

BILL SUMMARY

This Board-sponsored bill would incorporate a specific statute of limitations for issuing a deficiency determination against corporate officers and other responsible persons.

ANALYSIS

CURRENT LAW

Under existing law, Section 6829 of the Sales and Use Tax Law provides that upon termination, dissolution, or abandonment of a business entity (i.e., corporation, partnership, limited liability partnership, or limited liability company), any officer, member, manager, partner, or other person who is under a duty to act for the entity in complying with any sales or use tax requirements (including the supervision or control over a person with such duty), shall be personally liable for any unpaid sales or use taxes, as specified, and interest and penalties if that person willfully fails to pay or to cause to be paid any taxes due from that entity. A person liable under Section 6829 (the “responsible person”) becomes liable as of the date the entity terminates, dissolves, or becomes abandoned.

To collect the amount due from the responsible person, existing law specifies that a determination may be issued in accordance with the general laws applicable to the collection of sales and use tax. Accordingly, in the absence of fraud, the limitations period for issuing a notice of determination under Section 6829 is three years if the responsible person filed his or her own return for the period during which the entity terminated and eight years if the responsible person did not file such a return. That is, since Section 6829 liability is the liability of the responsible person, it is the responsible person’s filing of a sales and use tax return (or not) that is relevant, not the filing of returns by the entity. Since the responsible person generally does not file a return in his or her own name, the applicable limitations period for issuing determinations under Section 6829 is typically eight years from the last day of the month following the reporting period in which the entity terminated, dissolved, or became abandoned.

PROPOSED LAW

This bill would amend Section 6829 of the Sales and Use Tax Law to make clarifying changes and to incorporate a specific limitations period with respect to issuing a deficiency determination against corporate officers and other responsible persons.

Specifically, the bill would require that such a determination be mailed within the earlier of:

- three years after the last day of the calendar month following the quarterly period in which the Board obtains actual knowledge, through its audit or compliance activities, of the termination, dissolution, or abandonment of the entity,

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- three years after the last day of the calendar month following the quarterly period in which the Board obtains written communication by the business or its representative of the termination, dissolution, or abandonment of the entity, or
- eight years after the last day of the calendar month following the quarterly period in which the entity was terminated, dissolved, or abandoned.

The bill would specify that if the business or representative of the business files a notice of termination, dissolution, or abandonment of the entity with a state or local agency other than the Board, this filing shall not constitute actual knowledge by the Board under this section.

The bill would take effect on January 1, 2009.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Board of Equalization in order to incorporate a limitations period applicable to issuing determinations against corporate officers and other responsible persons that is more appropriate than the general limitations period currently applicable.
2. **A separate limitations period for this statute makes sense.** Having a limitations period based on when a corporate officer or other responsible person filed a tax return for most cases of liability under Section 6829 does not appear to be intended, but rather is the result of using the general Sales and Use Tax Law limitations period. The general limitations period is designed for the usual direct liability of the actual taxpayer, who is required to file returns for specific periods known to both the taxpayer and the Board. A limitations period should be adopted that is specifically designed for liability under Section 6829, and should be based on the date the Board becomes aware that the triggering event for such liability has occurred: the termination of the entity.

COST ESTIMATE

This bill would not have any material effect on the Board's administrative costs.

REVENUE ESTIMATE

Enactment of this measure would not impact state or local revenues.

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